

DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval

For

Exception to Fair Opportunity Memo

Acquisition Plan Action ID: VA258-18-AP-1151

Contracting Activity:

Department of Veterans Affairs
Phoenix Network Contracting Office (NCO 22-Gilbert)

Department of Veterans Affairs
Southern Arizona VA Health Care System (SAVAHCS)

Acquisition Plan: VA258-18-AP-1151
PR IFCAP: 678-19-1-221-0002

1. Description of Action:

The proposed sole source task order is for the provision of preventative maintenance services on various Siemens Medical Solutions USA, Inc manufactured equipment currently in use throughout VISN 22. These units will require ongoing preventative maintenance and support in order to ensure that they remain fully functional and can continue to be used for their intended purposes of providing Imaging and/or Ultrasound services in conjunction with critical patient care. The services are currently being provided under task orders against DLA IDIQ contract SPE2D1-17-D-0023.

The proposed sole source task order will be firm fixed price under an GWAC IDIQ contract that has been awarded by the Defense Logistics Agency (DLA) under contract SPE2D1-17-D-0023. The period of performance of the DLA contract is 03/28/2017 to 03/27/2027. The ceiling amount of the DLA contract is \$4,128,000,000.00.

The DLA Troop Support Medical Supply Chain and the Department of Veterans Affairs National Acquisition Center (VA NAC) are the only activities authorized to place delivery orders under this IDIQ contract except as otherwise delegated in writing by the DLA or VA NAC. Both the VA NAC and DLA will issue orders directly against any IDIQ contract under the program, regardless of which agency is the designated administrating agency. The agency which issues an order will be responsible for all administration functions for the given order.

2. Description of Supplies or Services:

The estimated value of the proposed action is: Base \$1,068,303.91/ Total Estimated Value Base plus 4 Option Years \$5,881,482.67

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The preventative maintenance (PM) services of Imaging and/or Ultrasound equipment located at SAVAHCS facility, as the original equipment manufacturer (OEM), and sole firm that is capable of servicing, repairing, and supplying replacement parts within manufacturers recommendations for any and/or all equipment.

a. Equipment Listing:

Equipment	EE#	Site #
MAGNETOM Verio	63274	400-521431
Artis zee Ceiling	60009	400-181899
AXIOM Sensis	60058	400-181902
syngo XWorkplace	60717	400-181900
Artis zee Ceiling	74453	400-353776
syngo XWorkplace	75360	400-369580
AXIOM Sensis	74454	400-441667
AXIOM Luminos Agile	75427	400-389984
Biograph TruePoint 64	52509	400-187538
MAGNETOM Avanto	58082	400-198813
MR syngo MM Workplace	72728	400-198814
syngo XWorkplace	84797	400-187539
syngo XWorkplace	74020	400-187540
syngo XWorkplace	72806	400-433087
CT Somatom Definition AS64	72796	400-336370
CT Somatom Definition Flash	81807	400-484459
syngo.via	81814	400-543074
Artis zee Ceiling - Cath Lab	85117	400-530837
AXIOM Sensis	85118	400-561895
Sensis High End SIS Server	85119	400-561897
Artis zee Ceiling - EP Lab	86710	400-553786
AXIOM Sensis	86711	400-535084
syngo XWorkplace	86712	400-484456

b. SAVAHCS Independent Government Estimate

Base	\$1,068,303.91
Option Year 1	\$1,203,294.69
Option Year 2	\$1,203,294.69
Option Year 3	\$1,203,294.69
Option Year 4	\$1,203,294.69
Total	\$5,881,482.67

c. Period of Performance

10/01/18 thru 09/30/19 - Base Year
10/01/19 thru 09/30/20 - Option Year One
10/01/20 thru 09/30/21 - Option Year Two
10/01/21 thru 09/30/22 - Option Year Three
10/01/22 thru 09/30/23 - Option Year Four

3. 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.

Order against: FSS Contract Number: SPE2D1-17-D-0023

Name of Proposed Contractor: SIEMENS MEDICAL SOLUTIONS USA, INC

Street Address: 40 LIBERTY BLVD

City, State, Zip: MALVERN, PA 19355

Phone: 760-994-9828

Compliance with the specifics of the warranty and the service agreement is required. Services attempted or performed by any person or company not authorized to perform such service will constitute a breach of the agreement and will consequently void the warranty on the systems currently in operation at SAVAHCS.

() 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.

4. Rationale Supporting Use of Authority Cited Above:

The imaging equipment software updates and upgrades to these systems are only available from Siemens. They are the original equipment manufacturer (OEM) and these updates and upgrades will not be available from any other source. The VA has received a confirmation from Siemens verifying that they are the only vendor who can perform these services and that they do not have a responsive/eligible contractor partner in the servicing this Siemens manufactured proprietary equipment. Compliance with the specifics of the warranty and the service agreement is required. Services attempted or performed by any person or company not authorized to perform such service will constitute a breach of the agreement and will consequently void the warranty on the systems currently in operation. This single factor precludes modification to enhance competition. Thus, acquiring a service contract with a potential contractor other than the suggested source can potentially prove too costly and injurious to the Government. If VA were not to obtain this particular service, the station would not be able to safely and effectively treat patients. There will be a substantial duplication of cost to the government due to the purchasing of additional equipment or out-sourcing this service, if the equipment is not adequately maintained for use.

If this is a Brand Name Justification: The discussion shall include how the particular brand-name, product, or feature is essential to the Government's requirements and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency's needs. Include this sentence in your discussion: **Not applicable.**

6. Efforts to Obtain Competition: *A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable.*

Contracting Specialist (CS) conducted extensive efforts to obtain competition. CS posted sources sought RFI to both FBO - 36C25818Q9424 and GSA – RFQ1287224 for 14 days with the following results:

a. General Services Administration (GSA) VA:

Number SIN - 66-503/ 627-2004 / 66-122/ 632 9/ 615 5000/ A-14G schedule categories; Selected 27 SD/VOSBs – 23 No Quotes with 6 of those being SD/VOSB with zero positive responses. See P02 responses in eCMS 36C25818Q9424 briefcase.

b. Federal Business Opportunities (FBO): Zero positive responses.

c. High Tech Medical Equipment (HTME) contracts portal:

The CS emailed market research question to 5 imaging firms listed in HTME which yielded only one positive response from Siemens Medical Solutions Inc. Siemens. See P02 responses in eCMS 36C25818Q9424 briefcase.

d. CS reviewed the above and the following links:

- [eCMS](#): VA's contracting systems
- [GSA](#) - [HTME](#) - [SAC](#) - [NAC](#) - [NSSL](#) - [WSNC](#): FSS, GSA, BPA, IDIQ and pre-existing contracts.
- [FPDS](#) - [Gateway](#): Open market and FSS research based off similar imaging equipment.
- [UNICOR](#) & [Ability One](#): Mandatory Sources - The NAICS detailed in the header is not listed under firms SAM Assertions for listed NAICS Codes Selected
- [DSBS](#) - [OSDBU](#) - [USASpending.gov](#): Other market research databases

The efforts are also detailed below in paragraph 8.

7. Actions to Increase Competition: Describe actions taken, or that will be taken, to remove or overcome any barriers to competition before initiating any subsequent acquisitions for the supplies, or services required, including challenges to restrictive data markings, data rights, preparation of a performance based work statement, etc.

Currently Siemens is the only vendor authorized to provide this service. If Siemens authorizes other vendors to provide these services, other vendors then can be considered on future preventive maintenance services on this equipment. The contracting office may survey the market again and solicit sources as necessary. In order to overcome barriers to competition, more sources supplying equivalent equipment/services must be available. Since Siemens Medical has the proprietary knowledge, parts, and licensed software, overcoming the barriers for competition cannot be utilized at this time. Lastly laws, clauses and regulations such as VAAR clauses 852.219-10, 852.219-11, 15 USC 657s and 13 CFR 125.6 enables these barriers as well, and the Government has no choice but to comply

8. Market Research: Provide a description of the market research conducted among the contract holders and the results. If market research was not conducted, the reasons it was not conducted should be stated. When citing 16.505(b)(2)(i)(b) or 16.505(b)(2)(i)(e), the only possible way to state in paragraph 5 of the J&A that there is only one contractor who can fulfill the agency's needs is to conduct market research, and it should be summarized here.

Market research for this effort did not yield any additional sources that could meet the Government's requirements. There is zero competition anticipated for this acquisition. In accordance with FAR 8.405-6, this action will be synopsized post award on the Federal Business Opportunities (FBO) and the justification will be made publicly available. No other prime firms have contractors that are OEM trained or have certified technicians that can also provide timely and appropriate software/hardware preventive maintenance service per the OEM firm.

Siemens Medical representative confirmed that due to VAAR clauses 852.219-10/ 852.219-11 referencing; 15 USC 657s and 13 CFR 125.6 - limitations on subcontracting; their SDVOSB/VOSB's primes would simply be a pass-through company and Siemens would

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essentially be conducting 100% of the services performance as the subcontractor. Siemens previously had to consult an SDVOSB that was not aware of this USC law which resulted in the SDVOSB set-aside service contract being Terminated for Convenience.

Note: Part of these details was communicated over a telephone conversation with a Siemens representative and the confirmation was emailed from this same Siemens representative. See eCMS briefcase 36C25818Q9424 P02 title, *Siemen ZERO SB'S Mkt Rch - Imaging PM*.

Currently there is at least 3 active contracts for limited sources of similar service items awarded to Siemens Medical Solutions USA, Inc:

1. SPE2D1-17-D-0023 - VA258-17-F-2226 – 10-01-2018 - 09-30-2022 - \$2,218,541.05 - Siemens Medical Solutions USA, Inc.
2. SPE2D1-17-D-0023 - VA258-17-F-2930 – 10-01-2018 – 09-30-2018 - \$1,407,011.57 - Siemens Medical Solutions USA, Inc.
3. SPE2D1-17-D-0023 - VA258-17-F-2853 – 10-01-2017 – 09-30-2018 - \$697,218.09 – Siemens Medical Solutions USA, Inc.

9. Other Facts:

In section 6 and in the attached market research report, it detailed that these services are only available from one source. Compliance with the specifics of the warranty and the service agreement is required. Services attempted or performed by any person or company not authorized to perform such service will constitute a breach of the agreement and will consequently void the warranty on the systems currently in operation at SAVAHCS.

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.



SIGNATURE

4/27/18

DATE

Krista Edwards
NAME

Biomedical Engineer
TITLE

FMSL
SERVICE LINE/SECTION

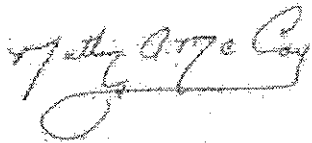
Southern Arizona VA Health Care System (SAVAHCS)
FACILITY

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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:

Based on historical prices paid for similar items and on catalog pricing, the Contracting Officer has determined that the anticipated cost to the Government will be fair and reasonable. The anticipated cost is fair and reasonable to the Government based on the using service estimate and a breakdown of expenditures from the contractor. In addition, Contracting Officer plans on getting the agreed to contracting pricing from the VA HTME NAC and ensuring that the pricing is consistent with the rates previously determined to be fair and reasonable.

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



Digitally signed by NATHAN A
MCCOY 1358052
Date: 2018.07.19 10:22:19 -07'00'

SIGNATURE

DATE

Nathan McCoy
Contracting Officer
Branch Chief Services – 2
Department of Veterans Affairs
NCO 22 Gilbert, VHA Desert Pacific District/SAO-West

- 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.



23 JUL 18

SIGNATURE

DATE

ACTING FOR
Sabrina J. Smith
Director of Contracting
Department of Veterans Affairs
NCO 22 Gilbert, VHA Desert Pacific District/SAO-West

DANIEL C. THIEL
Contracting Officer

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.

SIGNATURE

DATE

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