



DEPARTMENT OF VETERANS AFFAIRS  
National Acquisition Center  
Commodities Services and Acquisition Service  
555 Corporate Circle Golden, CO 80401

JUSTIFICATION AND APPROVAL  
FOR OTHER THAN FULL AND OPEN COMPETITION  
UNUSUAL AND COMPELLING URGENCY  
NATIONWIDE DIALYSIS CONTRACT EXTENSION

1. Contracting Activity Identification:

Station ID: 36C791, Agency ID: 3600, Region ID: 36

The Commodities Services & Acquisition Service (CSAS) under the Department of Veterans Affairs (VA), National Acquisition Center (NAC) is the contracting activity responsible for this procurement on behalf of the Office of Community Care (OCC).

2. Description of the Action Being Approved:

CSAS is seeking approval for use of other than full and open competition, unusual and compelling urgency, to modify the contracts shown in section 2a. to exercise the option to extend services on the Nationwide Dialysis Services Contracts (NDSC) by six-months in accordance with FAR 52.217-8, Option to Extend Services. There are sufficient funds within the IDIQ ceiling to cover the six-month extension. The six-month extension is required to guarantee continuity of critical dialysis care until new contracts are put in place. The new dialysis contract(s) are estimated to be awarded no later than January 31, 2019.

a.

CONTRACT	PROVIDER
VA791-13-D-0011	American Renal Associates
VA791-13-D-0012	Atlantis Healthcare Group of PR, Inc.
VA791-13-D-0013	DaVita Healthcare Partners
VA791-13-D-0014	Deer's Head Center; MD Dept. of Health
VA791-13-D-0015	Dialysis Clinic, Inc.
VA791-13-D-0016	Dialysis Corp of America
VA791-13-D-0017	Dialysis Newco, Inc.
VA791-13-D-0018	Emory Dialysis, LLC [Health Systems Inc]
VA791-13-D-0019	Fresenius Medical Care Holdings, Inc.
VA791-13-D-0022	Independent Dialysis Foundation
VA791-13-D-0023	Liberty Dialysis-Hawaii LLC
VA791-13-D-0024	Liberty Dialysis-North Hawaii LLC

VA791-13-D-0025	Liberty Dialysis Hawaii Mainland LLC
VA791-13-D-0027	Physician's Choice Mgmt., LLC
VA791-13-D-0028	Satellite Healthcare, Inc.
VA791-13-D-0029	South Fulton Dialysis Center LLC
VA791-13-D-0030	Trinity Dialysis Clinic
VA791-13-D-0031	US Renal Care, Inc.
VA791-13-D-0032	Wake Forest University [Health Systems Inc.]

**3. Background on Services Required to Meet the Agency's Needs:**

The VA NDSC maintains dialysis services performed in all areas of the United States, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands. The current dialysis capability within Veterans Affairs Medical Centers (VAMCs) does not allow for VA care of the entire Veteran population requiring dialysis services.

Healthcare providers in the community offer dialysis services nationwide for Veterans as authorized by the VAMCs. The providers deliver, supervise, and monitor dialysis services for chronic hemodialysis (outpatient), home hemodialysis, chronic peritoneal (outpatient) dialysis, and training sessions for home-based hemodialysis and peritoneal dialysis. The providers' facilities are located within the geographic locations of the referring VAMCs, and are readily accessible to the veteran patient population within the Veteran Integrated Service Networks (VISNs). The healthcare provided is delivered in a manner consistent with the needs of the veterans and standards of quality delivered to the providers' non-VA patients. Personnel assigned by the providers are licensed by State, Territory, or Commonwealth of the United States or the District of Columbia.

The NDSC awarded in 2013 consists of multiple awards under an indefinite delivery/indefinite quantity (IDIQ) type contract. The IDIQ consists of a base period, four one-year option periods, and a six-month maximum option period extension, under FAR 52.217-8. The NDSC's Option Year IV period of performance ends on September 30, 2018.

The 2013 IDIQ has a contract ceiling of \$3,035,000,000. From October 2013 through July 2018 expenditures were approximately \$2,288,905,086 based on information received from Financial Services Center (FSC). The available amount is approximately \$746,094,914. Fiscal Year (FY) 17 expenditures in total were approximately \$523M, therefore it is reasonable to believe there are enough funds to cover expenses for the rest of FY18 and through a six-month extension in FY 19.

There is sufficient funding within the IDIQ contract ceiling to cover this action, which is estimated at [REDACTED] for the six-month extension.

Originally, four Community Care Network (CCN) contracts were anticipated to be finalized and awarded prior to the existing dialysis contract's period of performance ending September 2018.

CCN contracts will provide an array of healthcare services, to include dialysis services. Ongoing delays encountered between the regional set up and restructuring of pre-award activities of this complex bundled healthcare contract on CCN has created an urgent requirement for a separate standalone dialysis contracts. New IDIQ dialysis contracts must be solicited and awarded prior to the six-month extension expiration of March 31, 2019 for continuity of Veteran dialysis care.

A new IDIQ contract will consist of a base period, of four one-year option periods, and a six-month option to extend mirroring its predecessor contract. The anticipated award would be no later than January 31, 2019. Activities for the new IDIQ solicitation have been initiated, use of the extension of services under the contracts listed in 2a. will allow Veterans to maintain their healthcare until a new contract can be put in place. Options will be exercised on this standalone dialysis IDIQ after evaluating the status and operation of the CCN contracts.

The NDSC provides critical healthcare services to the Veterans who are unable to receive dialysis care from the Veteran's Health Administration (VHA). Approximately 17,000 Veterans are currently receiving dialysis services through the NDSC contracts. A gap in contractual coverage would have catastrophic results outside of just a lapse in care/coverage. Dialysis services are not optional for Veteran patients with chronic renal failure. It is imperative that no lapse in contractual coverage occurs, as any delay in dialysis service will cause mental/physical distress, discomfort, and potential loss of life.

#### **4. Statutory Authority:**

The statutory authority that permits this action is 41 U.S.C. 3304(a)(2) as implemented by FAR 6.302-2, Unusual and Compelling Urgency.

#### **5. Justification for Use of Authority:**

The critical services being acquired with the contract modifications is the rationale for the requested justification. Individuals requiring dialysis services traditionally exhibit nausea, fatigue, swelling, vomiting, and toxic levels of waste in the blood. Dialysis treatment is dependent upon age, energy level, overall health, and commitment to a treatment plan. It must be a physician's and/or patient's choice to not have or to discontinue dialysis at any time.

In-center hemodialysis and peritoneal dialysis replaces a small percentage of healthy kidney function, as healthy kidneys function ceaselessly. Dialysis maintains balance of acid/bases and salts in the bloodstream. Missed dialysis treatment(s) will increase the risk of illness, fatigue, heart problems, and even death.

The current environment within VA medical facilities does not allow for exclusive internal VHA care of the Veteran population requiring dialysis. There is an ongoing need for both hemodialysis and peritoneal dialysis for an increasing population to treat chronic kidney disease. The 2013 IDIQ contracts were set up to streamline the ordering of dialysis across the nation using private healthcare companies. Additionally, the 2013 IDIQ contracts were set up to mirror the Medicare methodology for treating End-Stage Renal Disease (ESRD).

In 2013, the VA was paying approximately \$486.25 to \$600.00 per treatment in the locations not supported by current contracts or Basic Ordering Agreements (BOAs) through the FEE program. These prices are much higher than VA's contracted highest rates of approximately [REDACTED] per treatment for hemodialysis under the NDSC contracts.

Based on the established dialysis network in place of 19 contracts, continuing to offer use through the existing contracts, while working on the procurement for the new dialysis contracts, will take advantage of economies of scale and save the Government money, but more importantly ensure continued healthcare services for the Veterans including preventing disastrous consequences. The solicitation for the 2013 IDIQ was unrestricted, allowing for full and open competition. The proposals were evaluated and awarded based on meeting technical requirements and fair and reasonable pricing. The period of performance for these contracts ends September 30, 2018.

The NDSC maintains a large network for dialysis services that the VA leverages because the VA cannot handle the current capacity of requested dialysis services in the VAMCs. The outsourced dialysis providers within this network allows the VA to maintain continuity of dialysis services by means of the individual 19 contracts. These dialysis contracts are needed to ensure the VA can continue to satisfy the dialysis needs for all Veterans. It is in the VA's best interest to extend the dialysis services under the authority FAR 52.217-8 for six-months.

**6. Efforts to Increase Competition:**

The contract extension modifications will not be synopsized due to urgent and compelling reasons indicated within exception FAR 5.202(a)(2). However, pre-solicitation activities are underway for the new dialysis contract(s), with planned usage of competitive procedures. A Request for Information (RFI) was posted to the Governmentwide point of entry (FBO.gov) on April 10, 2018 and amended April 25, 2018. Responses were due on May 13, 2018. Ten interested providers responded to the RFI, providing vital information and concerns regarding the future dialysis contract and CCN contracts. Eight respondents are current contractors, and two contractors responded who are not currently under contract. The two contractors who are not currently on contract are SDVOSBs. The SDVOSBs were not registered in the Vendor Information Pages, and do not possess the required Medicare certification. The RFP for the new dialysis contract (base plus four) is expected to be posted in October 2018.

It is in the VA's best interest to exercise the option to extend services with the current contractors because they already possess the required Medicare certification and can help the VA provide the critical health care services under the NDSC.

**7. Price Reasonableness:**

The Contracting Officer has determined the prices to be fair and reasonable by validating the awarded prices for Option Year IV dialysis services and ensuring current pricing does not change with the six-month extension in accordance with FAR 52.217-8, Option to Extend Services. The six-month extension was not evaluated at the initial time of award. Pricing between the base year and all option years was identical through all NDSC contracts further supporting the fair and reasonable determination.

**8. Market Research:**

Market research was conducted and there are at least 26 existing sources which are capable of satisfying the agency's requirements for the six-months extension of dialysis services, based on the current NDSC. Four of the 19 current contractors are registered as small businesses and 15

are registered as large businesses. The applicable NAICS code is 621492 for Kidney Dialysis Centers. SAM.gov reflects 3,687 vendors registered with this NAICS code.

Twenty-two vendors are registered in VIP with this NAICS code. However, after reviewing the capabilities narrative of each of the 22 vendors, none appear to actually provide dialysis services and instead provide healthcare consulting or general healthcare services. Furthermore, the requirement to have a NDSC is to have certified Medicare facilities. Approximately 70% of the certified Medicare facilities belong to two large businesses: DaVita and Fresenius Medical Care, which are both current contractors.

The table below shows 98% of the Medicare certified providers by vendor as of April 2018.

Provider Name	Grand Total Facilities	Percent of Market
<b>Total Depicted</b>	<b>7012</b>	<b>98.22%</b>
DAVITA	2593	36.60%
FRESENIUS MEDICAL CARE	2453	34.63%
INDEPENDENTLY OWNED	811	11.45%
DIALYSIS CLINIC, INC.	299	3.37%
US RENAL CARE, INC.	219	3.09%
AMERICAN RENAL ASSOCIATES	215	3.04%
SATELLITE HEALTHCARE	61	0.86%
DIVERSIFIED SPECIALTY INSTITUTES (DSI)	51	0.72%
RENAL VENTURES MANAGEMENT	31	0.44%
RENAL CARE GROUP INC.	23	0.32%
STATE OWNED	20	0.28%
UNIVERSITY OF UTAH DIALYSIS PROGRAM	18	0.25%
ATLANTIS HEALTHCARE GROUP	17	0.24%
KAISER PERMANENTE	17	0.24%
SANKAR NEPHROLOGY GROUP	17	0.24%
CENTERS FOR DIALYSIS CARE	16	0.23%
GREENFIELD HEALTH SYSTEMS	15	0.21%
NORTHWEST KIDNEY CENTERS	15	0.21%
SATELLITE DIALYSIS	15	0.21%
WAKE FOREST UNIVERSITY	15	0.21%
LIBERTY DIALYSIS HAWAII	14	0.20%
INNOVATIVE DIALYSIS SYSTEMS	12	0.17%
SANFORD HEALTH	12	0.17%
MAYO CLINIC DIALYSIS	11	0.16%
CENTRACARE DIALYSIS	10	0.14%
RENAL CARE PARTNERS	10	0.14%
GUNDERSEN LUTHERAN	7	0.10%
INDEPENDENT DIALYSIS FOUNDATION (IDF)	7	0.10%
INTERMOUNTAIN HEALTHCARE	7	0.10%
RELIANT RENAL CARE	7	0.10%

Current NDSC contractors are highlighted in the table above. Although there are only 14 highlighted rows, all 19 contractors are represented by the highlighted rows. (Note: Satellite Healthcare is listed more than once, and some contractors have multiple contracts, i.e.: Innovative Dialysis Systems and Fresenius Medical Care.) Some contractors fall under

"Independently Owned" and "State Owned". By allowing the six-month extension, the NDSC covers more than 80% of all certified ESRD facilities, by adding the total of the highlighted rows. Some contractors fall under "Independently Owned" or "State Owned", thus the percentage from the group was not included in the 80% calculation because it was not all inclusive.) This table further reflects that there have not been a lot of new entrants into this field in the past five years.

Due to the critical nature of the dialysis healthcare it is in the VA's best interest to extend the contracts that are already in place as it takes the least amount of time and it is urgent and necessary to provide this care to Veterans.

**9. Other Facts that Support the Action:**

Due to the unusual and compelling urgency, the Government could be harmed by losing dialysis services coverage by aiding in the discomfort and potential deaths of Veterans currently utilizing the NDSC.

**10. Interested Sources:**

Nineteen providers are currently contracted for dialysis services. Four small business contracts are no longer in use. The providers with active contracts are listed above at Section 2a. Ten companies responded to the RFI. Eight companies already have current contracts. The two other respondents are SDVOSBs, and were not registered in VIP and do not meet the technical requirements of Medicare Certification. Between current contractors and RFI respondents, at least twenty-one vendors are interested.

**11. Actions Taken to Remove Barriers to Competition**

A competitive procurement is planned to take place within the next 6-months by January 31, 2019, while concurrently meeting the urgent needs of our Veterans through the current NDSC vendors who the VA already verified Medicare certified for End Stage Renal Disease.

**12. Requirements Certification:**

I certify that the requirement outlined in this justification is a Bona Fide Need of the Department of Veterans Affairs and that the supporting data under my cognizance, which are included in the justification, are accurate and complete to the best of my knowledge.

Christopher A DeWitt 1119147  
Digitally signed by Christopher A DeWitt 1119147  
Date: 2018.09.11 09:44:19 -06'00'

Sandra Cox  
Program Manager  
National Dialysis Services  
VHA Office of Community Care

\_\_\_\_\_  
Date



c. Agency Advocate for Competition: I have reviewed the foregoing justification and recommend approval for use of other than full and open competition, pursuant to 41 U.S.C. 3304(a)(2) as implemented in FAR 6.302-2 Unusual and Compelling Urgency, to modify the foregoing contracts to exercise 52.217-8, Option to Extend Services to extend services on the Nationwide Dialysis Services Contracts (NDSC) by six-months, subject to the availability of funds and having otherwise been authorized for acquisition.



D. Edward Keller Jr.  
Associate Executive Director  
Office of Procurement Policy, Systems and Oversight  
Agency Advocate for Competition

24 Sep 18  
Date

d. VA Senior Procurement Executive Approval: I have reviewed the foregoing justification and approve the use of other than full and open competition, pursuant to 41 U.S.C. 3304(a)(2) as implemented in FAR 6.302-2 Unusual and Compelling Urgency, to modify the foregoing contracts to exercise 52.217-8, Option to Extend Services to extend services on the Nationwide Dialysis Services Contracts (NDSC) by six-months, subject to the availability of funds and having otherwise been authorized for acquisition.



Rick Lemmon  
Acting Executive Director  
Office of Acquisition and Logistics  
Senior Procurement Executive

9-25-18  
Date