

JUSTIFICATION FOR AN EXCEPTION TO FAIR OPPORTUNITY

1. Contracting Activity: Department of Veterans Affairs (VA)  
Office of Procurement, Acquisition and Logistics  
Technology Acquisition Center  
23 Christopher Way  
Eatontown, NJ 07724
2. Description of Action: The proposed action is for a firm-fixed-price (FFP) delivery order issued under the National Aeronautics and Space Administration (NASA) Solutions for Enterprise-Wide Procurement (SEWP) V Government Wide Acquisition Contract (GWAC) for maintenance support services for existing brand name NetApp hardware, software, and firmware in support of the Vista Imaging Tier II Storage Grid for the VA enterprise.
3. Description of the Supplies or Services: VA, Office of Information and Technology (OI&T), Information Technology Operations and Service (ITOPS) has a requirement to renew and consolidate maintenance support services for existing NetApp hardware, and associated software and firmware, that were purchased on a brand name or equal basis under two separate NASA SEWP delivery orders in Fiscal Years 2015 and 2017. The existing NetApp hardware comprises a large portion of the Vista Imaging Tier II Storage Grid that is installed at medical centers throughout the VA enterprise. Vista Imaging is the storage system of record for VA, containing over 22 billion patient files, corresponding to approximately 33 petabytes. Vista Imaging Tier II is a Federal Drug Administration (FDA) certified medical system. As a result, all equipment under this system must be approved under the FDA 510K certification program. The existing NetApp hardware provides the ability to acquire, store, and retrieve medical image files during medical center operations. Images can range from an x-ray to a copy of a medical consent signature. Further, the NetApp Storage Grid allows VA to meet federal laws with respect to record and image retention. VA's Vista Imaging Tier II storage maintenance support is required to ensure the existing hardware remains operational and that the associated software and firmware remain up-to-date with the latest patches and upgrades. Hardware maintenance includes on-site or remote diagnosis, on-site maintenance repair and hardware replacement parts, 24x7 coverage with replacement parts provided within four-hours, a dedicated toll-free phone line for Tier II and III support, and remote engineering support to include installation of software patches and upgrades, and identification and application of configuration changes. The period of performance shall be a three-month base period, plus a three-month option period for continue support. The total estimated value of the proposed action is [REDACTED]
4. Statutory Authority: Pursuant to Federal Acquisition Regulation (FAR) Subpart 16.505(a)(4), the following brand name requirement is being justified and approved as an exception to fair opportunity under the statutory authority of Section 41 U.S.C. 4106(c)(2) as implemented by FAR Subpart 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 paragraph 8 of this document, it was determined that limited competition is available among resellers for the required maintenance for NetApp hardware, and associated software and firmware. Unanticipated delays occurred with award of the new contract which is expected to consolidate VA's VistA Tier I and Tier II maintenance and support requirements. Specifically, VA was in the process of awarding a new contract action under GSA Schedule 70; however, upon evaluation, it was determined that VA's requirements for consolidated Tier I and Tier II maintenance and support service could not be met in part because of an extensive amount of proposed open market items that were not included on the GSA Schedule. Based on these facts, VA determined that an award on the GSA schedule could not meet VA's requirements. VA is currently re-evaluating its technical needs, refining its requirements and conducting market research. In order to maximize competition and meet VA's needs, the Government anticipates an open market contract, with an anticipated award date of January 2019. However, in the interim, VA requires a three-month contract for Tier II support to ensure there is seamless support as this is a critical system directly impacting patient care.

The VistA Imaging Tier II solution is based on proprietary NetApp hardware. VA currently uses NetApp hardware to support Tier II archival image storage known as the Storage Grid throughout the VA enterprise. The NetApp hardware was previously procured on a competitive basis in fiscal years 2015 and 2017 using brand name or equal product descriptions with a NetApp solution ultimately being selected to comprise the Storage Grid. The existing NetApp Storage Grid is installed at most medical centers throughout VA and is vital to providing archival image storage for its respective regions, including fault-tolerance, in-use migrations, support for clinical and administrative use cases, and ensuring zero loss of data. Only NetApp, or a reseller of NetApp hardware with access to the NetApp proprietary source code, NetApp proprietary software and firmware can provide these maintenance services. Access to the NetApp proprietary source code is required to ensure the services provided are properly configured. In addition, other manufacturers do not have access to the proprietary firmware and cannot provide the FDA 510K certified NetApp hardware replacement parts necessary to provide the required maintenance. Access to NetApp engineering support for NetApp hardware is critical for operational stability and for quick restoration of failed systems. It's critical that any source has access to the specialized workforce and system documentation, including access to the proprietary source code needed to provide the required services for these products for this NetApp solution, which includes hardware, software, and firmware proprietary to NetApp. The required services include engineering support, engineering changes to the NetApp Storage Solutions, and continuity of operation services without voiding the operational integrity of these systems. Without access to the proprietary NetApp technical data and source code, the vendor would not be able to affect changes to the proprietary hardware, software, and firmware in the VistA Imaging Tier II systems. Any other replacement parts would require a lengthy testing and approval process to be added to the existing system. It is estimated that this process will exceed the proposed period of performance of this proposed action and would result in a break of service if another brand name item was

used. Failure to maintain this hardware would directly impact Veteran patient care. For example, if images are offline it would adversely impact the ability of staff to provide complete and accurate care. In addition, if VA were unable to store images, VA could not perform the associated medical procedures, as it would be considered medical malpractice to perform a procedure requiring image retention. As a result, VA would have to transport the Veteran to a different facility for care. The Vista Imaging Tier II hardware currently in place is a critical piece of Vista Imaging Tier II archival storage infrastructure throughout VA. Likewise, it is critical that this infrastructure remains operational and maintenance services are continuously available to provide support for VA site Vista Imaging Tier II storage solutions.

6. Efforts to Obtain Competition: Market research was conducted, details of which are in the market research paragraph of this document. This effort did not yield any additional sources that can meet the Government's requirements. It was determined, however, that limited competition is viable among authorized resellers for this brand name hardware maintenance. In accordance with FAR 5.301 and 16.505(b)(2)(ii)(D), this action will be synopsisized and the justification will be made publicly available on the Federal Business Opportunities Page within 14 days of award of the order.

7. Actions to Increase Competition: The Government is currently conducting market research with the intention of consolidating this requirement with VA's Vista Tier I support requirement. The Government anticipates this new contract to be awarded within three months and that all future requirements for these services will be met through that new contract.

8. Market Research: Market research was conducted in October 2018 to ascertain the ability of any source, other than NetApp or its resellers, that can provide the required maintenance services. The research consisted of reviewing various alternative Storage Grid maintenance support plans including those from Cisco and Hewlett Packard. Based on review of these products, the Government's technical experts determined that only NetApp or one of its resellers can provide the required maintenance support for the proprietary reasons discussed above. Only NetApp, or its resellers, can access the proprietary hardware, software and firmware to provide the required maintenance, as outlined in paragraph five of this document. Other providers do not have access to the proprietary firmware to be able to provide the required Next Business Day on-site maintenance repair and FDA approved hardware replacement parts, 24x7 coverage 365 days/year dedicated toll-free phone availability for reporting a trouble ticket, and four-hour response time.

Additional market research was conducted in October 2018 by utilizing the NASA SEWP V GWAC Provider Look-up Tool to determine whether the brand name NetApp maintenance is available from NASA SEWP V GWAC holders. It was determined that there are a total of 90 resellers that can fulfill the Government's requirements, 20 of which are contract holders in Group B(2) SDVOSBs and are registered and verified in the Vendor Information Pages (VIP) database. Furthermore, market research was

conducted on the VIP database which found that two or more VIP verified vendors are capable of meeting the Government's requirements.

9. Other Facts: None.

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.



11. Fair and Reasonable Cost Determination: I hereby determine that the anticipated price to the Government for this contract action will be fair and reasonable based on anticipated competition. Further, NASA SEWP V GWAC has already determined the prices on contract to be fair and reasonable. Finally, if necessary, further price analysis will be conducted by comparing the proposed price to the Independent Government Cost Estimate.



12. Procuring Contracting Officer Certification: I certify that this justification is accurate and complete to the best of my knowledge and belief.



Approval

In my role as procuring activity Advocate for Competition, based on the foregoing justification, I hereby approve the acquisition of maintenance support services for existing brand name NetApp hardware, software, and firmware on an other than fair opportunity basis pursuant to the authority cited in paragraph 4 above, subject to availability of funds, and provided that the property and services herein described have otherwise been authorized for acquisition.

