

DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval (J&A)
For
Other Than Full and Open Competition (>SAT)

Acquisition Plan Action ID: 36C256-19-AP-0096

1. **Contracting Activity:** Department of Veterans Affairs, VISN 16, Houston, New Orleans, Biloxi, Fayetteville, Jackson, and Little Rock Medical Centers

2. **Nature and/or Description of the Action Being Processed:** The VISN 16 Prosthetics and Sensory Aids Service has requested a new interim contract for the continuity and consistency of the home oxygen service for Veterans to be approved for other than full and open competition. Contract 36C265-18-D-0129 for VISN 16 was awarded effective September 27, 2018 to start performance on October 1, 2018, and on October 3, 2018 notice of a timely protest was received. Due to this protest, a new interim contract is required to continue services for three months from the current contractor Rotech Healthcare, Inc., 3600 Vineland Road, Ste 114, Orlando, FL 32811. The proposed new interim contract is for three months with a period of performance from November 1, 2018 through January 31, 2019, and will be a firm-fixed-price contract.

3. **Description of Supplies/Services Required to Meet the Agency's Needs:** The VISN 16 Prosthetics and Sensory Aids Service interim contract will encompass the rental of home oxygen equipment, to include but not limited to, compressor, portable oxygen machines, tanks, racks, and liquid oxygen systems. This contract will include the delivery, set-up, and resupply of oxygen as necessary to meet the medical needs and prescriptions for our veterans. The services include delivery, repair, and pick-up of equipment, resupply of expendable supplies (nasal cannulas, hoses, etc.) and medical grade oxygen, and quarterly checks from a Certified Respiratory Therapist or a Registered Respiratory Therapist. An interim contract to continue home oxygen service for the Veterans serviced by Medical Centers in Houston, New Orleans, Biloxi, Fayetteville, Jackson, and Little Rock is therefore necessary with the current contractor, Rotech Healthcare, Inc. This contract will cover approximately 7,602 veterans per month for three months from November 1, 2018 through January 31, 2019, with the option for up to six more months of coverage if needed. The new contract type will be firm-fixed-price. The estimated cost for the interim contract to include the six months option period is ██████████ based on the estimated quantities needed and the current pricing. The Contracting Officer will enter into discussions if necessary to achieve a fair and reasonable price.

4. **Statutory Authority Permitting Other than Full and Open Competition:** 41 USC §3304(a)(1), as implemented by FAR 6.302-2.

 - (X) (1) Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements per FAR 6.302-1;
 - () (2) Unusual and Compelling Urgency per FAR 6.302-2;
 - () (3) Industrial Mobilization, Engineering, Developmental or Research Capability or Expert Services per FAR 6.302-3;
 - () (4) International Agreement per FAR 6.302-4
 - () (5) Authorized or Required by Statute FAR 6.302-5;
 - () (6) National Security per FAR 6.302-6;
 - () (7) Public Interest per FAR 6.302-7;

- () (6) National Security per FAR 6.302-6;
- () (7) Public Interest per FAR 6.302-7;

FAR 13.5 Simplified Procedures for Certain Commercial Items: This procurement is for home oxygen for Veterans, and procedures in FAR 13.5 were used in accordance with 41 USC §1901 to promote efficiency and to avoid unnecessary burdens for the government and contractor.

5. **Demonstration that the Contractor’s Unique Qualifications or Nature of the Acquisition Requires the Use of the Authority Cited Above (applicability of authority):** The Medical Centers in Houston, New Orleans, Biloxi, Fayetteville, Jackson, and Little Rock have been serviced by Rotech, Inc. under a contract that was awarded as a large business. The awarded contract 36C25618D0129 was protested and therefore an interim contract is required. An interim contract is needed to continue the vital service of home oxygen for Veterans, and is therefore necessary. Failing to provide home oxygen service would have an adverse impact to Veteran care.
The incumbent is the only company that can reasonably act in sufficient time and with reasonable cost to continue this service for the estimated four months that are needed for this contract. The typical transition period for the approximately 7,602 patients per month covered under this contract is 90 days. The needed coverage here is 120 days, which will allow for full transition to occur. Any company, other than the incumbent, would be exposed to a large initial cost for equipment and would only have four months over which to recoup the investment and a reasonable profit. This would cause all companies, other than the incumbent, to have to charge a significantly higher price than the incumbent. This would not be in the best interest of the Government or the American taxpayers. The incumbent already has equipment and personnel in place to provide this service for the additional time. Therefore, no additional resources are necessary for the incumbent to continue performance. This puts the incumbent in a unique position to be able to provide this service in a manner that no other competitor could.

6. **Description of Efforts Made to ensure that offers are solicited from as many potential sources as deemed practicable:** Under these circumstances, an offer will only be sought from the incumbent.

7. **Determination by the CO that the Anticipated Cost to the Government will be Fair and Reasonable:** The Contracting Officer has determined the pricing of the interim contract to be fair and reasonable based on the current prices and rates that are currently in effect under the existing contract and historical home oxygen pricing. Should discussions be necessary, the Contracting Officer will conduct those with the information gained from a review of the new award, and current prices and rates as below.

CLINS	Biloxi Current Price/rate	Fayetteville Current Price/rate	Houston Current Price/rate	Jackson Current Price/rate	Little Rock Current Price/rate	New Orleans Current Price/rate
1. Initial Set- Up						
2. 10 LPM concentrator w/backup system fee						
3. Cylinder - Size M or H refill						

4. Cylinder - Size E Refill						
5. Cylinder - Size D Refill						
6. Cylinder - Size B or M6 Refill						
7. Demand Nasal Cannula						
8. Demand Pulse Conserver Fee						
9. Liquid Oxygen System Fee						
10. Portable Liquid Oxygen System Fee						
11. Liquid Oxygen per pound						
12. Delivery for Resupply and Relocation						
13. Portable Concentrator						
14. Oxygen Cylinder Refill Stations						
15. Liquid Oxygen Portable Helio System						
16. Ventilator Equipment and Setup						
17. No Shows						
18. Firesafe Cannula's						
19. Portable gaseous system w/no stationary unit						

8. **Description of the Market Research Conducted and the Results, or a Statement of the Reasons Market Research Was Not Conducted:** For this action, no market research was conducted. Under these circumstances stated above, an offer will only be sought from the incumbent. However, the newly awarded contract, which has been protested, for Home Oxygen services across VISN 16 was competed as an SDVOSB set-aside after appropriate market research.
9. **Any Other Facts Supporting the Use of Other than Full and Open Competition:** In addition to the budgetary arguments above, and the inability of any contractor to successfully complete a transition of service in time, there is one other consideration. It would be inconvenient and possible dangerous to conduct two transfers of this service in just a few months. To transfer this service, a

new contractor must place equipment in the Veteran's home and the old equipment must be picked up by the outgoing contractor. There is no guarantee that the equipment used will be the same as the prior contractor, and therefore the Veteran or his or her caregiver must learn the new equipment and its use. If more than one transition should occur in short span, it could increase the possibility of accidental misuse of the equipment resulting in injury or death. While the risk of occurrence is low, the consequences if it occurs could be catastrophic. Therefore, the overall risk in transitioning services more than once in a few months must be rated no less than moderate and possibly high. Therefore, for this reason as well, it is in the best interest of the Veterans, and therefore the Government, to continue with the incumbent.

10. **Listing of Sources that Expressed, in Writing, an Interest in the Acquisition:** None.

11. **A Statement of the Actions, if any, the Agency May Take to Remove or Overcome any Barriers to Competition before Making subsequent acquisitions for the supplies or services required:** The protested contract 36C256-18-D-0129 was competed as an SDVOSB and awarded on September 27, 2018.

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 and belief.

Katy A. Davis
Katy A. Davis
Network Prosthetic Program Manager
VISN 16

October 16, 2018
Date

13. **Approvals in accordance with the VHAPM Part 806.3 OFOC SOP:**

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

Ricky C. Weaver
351851

Digitally signed by Ricky C.
Weaver 351851
Date: 2018.10.17 11:51:22 -05'00'

Ricky C. Weaver
Contracting Officer
NCO 16

Date

b. **One Level Above the Contracting Officer (Required over SAT but not exceeding \$700K):** I certify the justification meets requirements for other than full and open competition.

ANDREW J
RAIBER 292563

Digitally signed by
ANDREW J RAIBER 292563
Date: 2018.10.17 11:57:44
-05'00'

Andrew J. Raiber
Division Chief
NCO 16, Division II

Date

c. NCO 16 Director of Contracting Review and Approval: I certify the justification meets requirements for other than full and open competition.

AARON VILLALPANDO Digitally signed by AARON
VILLALPANDO 178014
178014 Date: 2018.10.18 14:02:09 -05'00'

Aaron Villalpando
Director of Contracting
Network Contracting Office 16

Date

d. VHA SAO HCA Review and Approval: 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 other than full and open competition.

TERRY L. Digitally signed by TERRY
L. SPITZMILLER 394683
SPITZMILLER Date: 2018.10.23 08:12:05
394683 -05'00'

Terry L. Spitzmiller
VHA Head of Contracting Activity (HCA)

10/23/2018

Date