

DEPARTMENT OF VETERANS AFFAIRS

Justification and Approval

For

Exception to Fair Opportunity Memo

Acquisition Plan Action ID: VA261-18-AP-9824

1. Contracting Activity: PR #: 640-19-1-500-0001
Department of Veterans Affairs
Network Contracting Office (NCO) 21
855 M Street, Suite 1020 Fresno, CA 93721

2. Description of Action:

This exception to fair opportunity justification is for a new task order to procure annual maintenance agreements with GE Healthcare, Inc for the servicing of High Tech Medical Equipment listed below in para (a.). The contracting office cannot follow the fair opportunity process for solicitation and award due to the equipment involved and the nature of the maintenance required which would involve intellectual property and other proprietary rights owned exclusively by GE Healthcare. GE Healthcare is the only known vendor that can supply service support that includes preventive maintenance, corrective maintenance during hours of coverage, and software support system that includes required updates/upgrades. The task order will also be issued against a mandatory NAC high tech medical equipment contract.

a. Equipment:

1. GE Innova 4100 Angio XVA419
System ID: 650493ANGIOCT
2. GE Innova 2100 Cardio
XCA108
System ID: 65049321
3. GE Innova 3100 Cardio
XCA323
System ID: 65049331
4. GE Innova 3131 Angio
XVA311
System ID: 650493BIPL
5. GE Echosped LX 1.5 T MRI scanner
MSU128

System ID: 415493VMR

6. GE Signa 750 3.0T MRI Scanner
MDF013
System ID: 415493VMR2
7. GE MR Signa Cryogen
MSC28Z
System ID: 415493VCR
8. GE MR Signa Cryogen
MSC28Z
System ID: 415493VCR2
9. GE Lightspeed 750HD CT Scanner
CSPH01
System ID: 650493HD1
10. GE Lightspeed 750HD CT Scanner
CSPH01
System ID: 650493HD2

3. Description of Supplies or Services:

The proposed action is to provide Preventive Maintenance Service on (10) items of GE Imaging Equipment located in VA Palo Alto Health Care System in Palo Alto, CA. GE will provide software upgrades, repairs, new or certified parts to maintain that the equipment is operating according to factory specification. The total estimated value of the proposed action is \$ 4,239,110.00.

- 4. 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.

() 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.

Rationale Supporting Use of Authority Cited Above:

The GE equipment requiring a maintenance agreement is vital to the patient care operations at the VA Palo Alto Health Care System, this equipment can only be serviced by GE Healthcare due to the proprietary rights of the equipment itself as well as the maintenance equipment and software utilized to service it. GE is the OEM manufacturer or replacement parts and they are the only vendor that is authorized to work on their equipment. The intellectual property and proprietary data involved is only authorized for use by GE Healthcare, unauthorized usage by another party would constitute a breach of GE Healthcare intellectual property rights and may involve adverse legal ramifications. Additionally, all limited warranties that are held by the VA on the equipment are only valid in so far as the equipment is maintained annually by GE Healthcare, this ensures the proper maintenance is conducted and reduces the likely hood of costly repairs being needed and or extensive down-time incurred.

6. Efforts to Obtain Competition:

Market research was conducted for this requirement and the results are detailed in market research section of this document. Due to the Original Equipment Manufacturer (OEM) proprietary nature of the GE Healthcare equipment as well as the maintenance equipment and software required in conducting services on GE Healthcare equipment, only GE Healthcare can provide the required maintenance services. The only opportunity for competition exists if the VA decides to re-procure the imaging equipment which would not be a cost-effective or prudent decision given the recent purchase of the GE Healthcare Equipment. Therefore, there is no competition anticipated for this acquisition and in accordance with FAR 5.301 and 16.505(b)(2), this action will be synopsisized at award on the Federal Business Opportunities Page (FBO) and the justification will be made publicly available.

7. Actions to Increase Competition:

Currently GE Healthcare is the only vendor authorized to provide this service on their equipment since they are the OEM manufacturer. If GE Healthcare authorizes other vendor to provide these services other vendors will be considered on future preventive maintenance services on this equipment. The contracting office will continue to survey the market periodically and continue to seek guidance from the VA NAC on the procurement of Radiology and Imaging High Tech Medical Equipment (HTME).

8. Market Research:

Based on market research, it was determined that only GE Healthcare can meet the VA's requirement. GE Healthcare is the original equipment manufacturer and the only authorized contractor who is capable of providing the service due to the proprietary rights of the equipment itself as well as the maintenance equipment and software required to service it. Additionally, unauthorized usage of GE Healthcare's proprietary property and or software by another party for maintenance purposes could constitute a breach of GE Healthcare intellectual property rights and may involve adverse legal ramifications. Additionally, all limited warranties that are held by the VA on the equipment are only valid in so far as the equipment is maintained annually by GE Healthcare. Further research was conducted on VETBIZ, which was searched with keyword "XR INNOVA 4100" and NAICS 811219, California, this search yielded (1) result and this vendor provides medical staffing services. With these findings, there are not 2 SDVOSB/VOSB vendors that can perform this service also due to proprietary rights GE Healthcare has on their equipment. OSDBU has exempted this procurement from small business set-aside requirements IAW FY 2016 Small Business Procurement Review Program Policy dated June 22, 2016, exemption: iv. Orders against High Tech Medical Equipment National Contract for Imaging & Radiation Therapy.

The NAC has been negotiated and awarded at what is assumed as is fair and reasonable prices, however the VA will still seek additional discounts prior to award. The estimated amount of the award by year are listed below.

Base Year:	11/01/2018-10/31/2019 - \$847,822.00
Option Year 1:	11/01/2019-10/31/2020 - \$847,822.00
Option Year 2:	11/01/2020-10/31/2021 - \$847,822.00
Option Year 3:	11/01/2021-10/31/2022 - \$847,822.00
Option Year 4:	11/01/2022-10/31/2023 - \$847,822.00

Total: \$ 4,239,110.00

9. **Other Facts:** Only one awardee is capable of providing the service required at the level of quality required because the supplies or services ordered are unique or highly specialized.

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.

(This signature is the requestor's supervisor, fund control point official, chief of service, someone with responsibility and accountability)

MORTEN O.
GREEN 284338

Digitally signed by
MORTEN O. GREEN 284338
Date: 2018.10.18 09:58:01
-07'00'

Morten Green
Chief, Biomedical Engineering
VA Palo Alto Health Care System

Date

11. Determination that Anticipated Cost is Fair and Reasonable: The pricing is set by the IDIQ contract and the contracting officer will ensure that the task order reflects that pricing, which has been determined 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.

Parvinder Brar
Contract Officer
Network Contracting Office 21 (NCO 21)

Date

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.

Brooke C. Robison
Director of Contracting
Network Contracting Office 21 (NCO 21)

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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 other than full and open competition.

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

Date