

DEPARTMENT OF VETERANS AFFAIRS

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

Acquisition Plan Action ID: VA252-18-AP-5910

1. Contracting Activity:

Department of Veterans Affairs, Veterans Integrated Service Network (VISN) 12, Network Contracting Office (NCO) 12, Great Lakes Acquisition Center, 115 S 84th St, Milwaukee, WI 53214. VA2237#: 695-19-2-133-0001.

2. Nature and/or Description of the Action Being Processed:

Veterans Integrated Service Network (VISN 12) has at least 59 (295 over the course of 5 years) Stryker Corporation ("Stryker")-brand "Neptune" Surgical Waste Management System Rovers and Docking Stations ProCare Preventative and Corrective Maintenance.

This procurement will be pursued as a firm fixed price indefinite delivery, indefinite quantity (IDIQ) contract under the authority of 41 U.S.C. 1901 Simplified Acquisition Procedures as implemented in FAR 13.501. Acquisitions conducted under Simplified Acquisition Procedures are exempt from the requirements of FAR Part 6 but still require a justification using the format of FAR 6.303-2.

3. Description of Supplies/Services Required to Meet the Agency's Needs:

This procurement will be pursued as a fixed-firm price IDIQ with a five-year ordering period:

<u>Line Item</u>	<u>Description</u>	<u>Est. Qty</u>	<u>Est. Unit Cost</u>	<u>Est. Total Cost</u>
0001	Neptune Rover or Docking Station ProCare Preventative and Corrective Maintenance	59 EA over 5 year ordering period	\$2,103.53 per EA per year	\$620,541.35

4. Statutory Authority Permitting Other than Full and Open Competition:

The authority for applying the Simplified Procedures for Commercial Items of FAR 13.5 is 41 U.S.C. 1901 and is implemented by for restricting competition on this procurement via FAR 13.106-1(b)(2).

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 Clement J. Zablocki VA Medical Center has the requirement of service and maintenance for its Neptune Rovers and Docking Stations beginning Q2 FY19; however, there are upcoming option

years of service and maintenance also expiring for other stations within the VISN. Therefore, it is in the best interest of the Government to pursue a VISN-wide IDIQ-type contract.

From previous procurements, it is known to the Contract Specialist (CS) that there are multiple small businesses – including Veteran-Owned Small Businesses (VOSBs) and Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) – that are authorized by Stryker to distribute Stryker equipment; however, the CS wanted to verify if this also applies to its ProCare services, which several VISN stations require for existing Neptune equipment and are currently in contract with Stryker via individual fixed-firm price (FFP) multiple-year contracts. To verify, the CS contacted Stryker's Government Sales Support. The Government Sales Support representative stated, "we do not allow 3rd part[y] businesses to service [Neptune Rover and Docking] equipment." To further verify, the CS contacted a Stryker Government Account Manager. The Government Account Manager stated that it does authorize small businesses – including VOSBs and SDVOSBs – to sell its ProCare services, but only at the time of sale of new equipment. Note: This procurement is for services *only*.

Moreover, Stryker requires on-site action (repairs and preventative maintenance) conducted only by "a trained (Stryker-certified) technician using OEM parts." Stryker has not certified third-party entities (i.e., other small or large businesses) to conduct on-site action. Thus, this procurement cannot be set-aside for any small business, as it would be in violation of the Limitations on Subcontracting – Monitoring and Compliance (JUL 2018) clause (VAAR 852.219-74), including sole source or set-aside for VOSBs or SDVOSBs under VAAR 819.70; sole source or set-aside for other small business under FAR 19 and/or which contain 52.219-14; or awards based on small business evaluation preference (e.g., 52.219-4). Due to the above requirement for Stryker-certified technicians using OEM parts and availability of such technicians and OEM parts being only available with Stryker, this also cannot be solicited for full and open competition. Finally, were these services to be distributed through any other small businesses, the Government would be incurring an additional markup as opposed to dealing directly with the manufacturer.

This procurement is a sole-source (including brand-name to Stryker) of commercial services pursuant to FAR 13.106-1(b)(2).

6. Description of Efforts Made to ensure that offers are solicited from as many potential sources as deemed practicable:

The CS made efforts to determine the level of competition by contacting the manufacturer. The CS determined that existing equipment cannot be serviced by businesses other than Stryker due to the technical certification and OEM parts requirements mentioned above. To open this procurement to competition, VISN 12 would have to replace its 59 (at least) Neptune Rovers and/or Docking Stations. Purchasing new equipment is not in the best interest of the Government, as the existing equipment is estimated to be over \$780,000.00, notwithstanding the price of new equipment from a different brand in addition to the administrative costs and burden associated with procuring such equipment.

7. Determination by the CS that the Anticipated Cost to the Government will be Fair and Reasonable:

IAW FAR 13.106-3(a)(2): Market research; Comparison of the proposed price with prices found reasonable on previous purchases; Current price lists, catalogs, or advertisements; The contracting officer's personal knowledge of the item being purchased; Comparison to an independent Government estimate.

8. Description of the Market Research Conducted and the Results, or a Statement of the Reasons Market Research Was Not Conducted:

In addition to the Market Research described above, the CS conducted a search on the Vendor Information Pages (VIP) with the keyword, "Stryker" and NAICS code 811219 (Other Electronic and Precision Equipment Repair and Maintenance) to determine if any VOSBs or SDVOSBs are able to fulfill the requirement. Two results were returned, one of which has a capability listed as "Stryker bed repair"; the other made no indication in its VIP profile if it can fulfill the requirement, but – excluding the fact that it has one employee listed making it nearly impossible to service all Neptune equipment within the VISN – it does not (per Stryker) provide certified technicians and OEM parts.

Further market research was done to determine if the ProCare services were available on existing contracts – results returned a negative response.

9. Any Other Facts Supporting the Use of Other than Full and Open Competition:

None – all considerations for use of Other than Full and Open Competition are explained above.

10. Listing of Sources that Expressed, in Writing, an Interest in the Acquisition:

Stryker Corporation

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 procurement of these services is predicated by the restriction of manufacturer-certified technicians and OEM parts. The Agency may elect to procure surgical waste management equipment from other brands by conducting market research and using future useful servicing life expectations as an evaluation factor in solicitations.

VHAPM Part 806.3 Other Than Full and Open Competition (OFOC) SOP
Attachment 2: Request for Sole Source Justification Format >SAT

- 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.

Signature

Title:

Facility:

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.

Signature

Title:

Facility:

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.

Signature

Title:

Facility:

Date