

## **DEPARTMENT OF VETERANS AFFAIRS**

### **Justification and Approval Under Simplified Acquisition Procedures (SAP) For Restricting Competition under FAR 13.106-1(b)(1) "Single Source"**

**1. Contracting Activity:**

Department of Veterans Affairs, VISN 20

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

This procurement under PR # 496-13-1-240-0003, where in accordance with FAR 6.001(a), acquisitions conducted under FAR 13 for SAP are exempt from the requirements of FAR Part 6, but still require a justification using the format of FAR 6.303-2, IAW the VHA SOP for Other Than Full And Open Competition dated 3-22-2011.

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

VISN 20 requires a commercial web based, knowledge based point of care product that will be made available throughout VISN20 for a base + 4 option years. These products may also be referred to as bedside information tools because they have been designed to provide information at the patient's bedside or point of care. This product also allows for off-site access and the potential to earn continuing medical education credit (CME). They tend to provide information that will directly affect patient care. They can be a good source for background information. What distinguishes these products from sources such as electronic textbooks or bibliographic citations databases that may link to full text is this emphasis on point-of-care, patient oriented information. These products are distinctly different from text-based, point-of-care sources such as printed guidelines: these electronic resources are updated much more frequently than print resources and provide tools for easily searching and sharing information. Total cost is \$96,893 in the base year. Period of performance is from October 1, 2012-September 30, 2013/14/15/16/17. Total cost Base + Options = \$487,763.00.

**4. Statutory Authority Permitting Restriction in Competition:**

The statutory authority for restricting competition under 41 U.S.C. 253(c), as implemented by FAR 6.303-2. The specific reason for restricting competition is exclusive licensing agreements.

**Demonstration that the Contractor's Unique Qualifications or Nature of the Acquisition Requires the Use of the Authority Cited Above (applicability of authority):**

The content of UpToDate is written exclusively for UpToDate, and UpToDate, the company is the sole publisher and copyright holder of this proprietary content. The content of UpToDate cannot be procured from any other source.

UpToDate has an incredibly easy to use interface which is required because the content involves heavy time constraints and cognitive loads. Other products have more complex search interfaces which are not appropriate in the context of searching for information at the point of care when an acute clinical information need arises.

UpToDate is both evidence based and expert opinion based. With products that are exclusively evidence based, if there is no evidence for a particular question then the results are empty. UpToDate has answers from experts where evidence is not available. As such, it is a comprehensive product that is more likely to have some answer to a clinical question than products that only contain evidence based content.

In order to assure patient safety, clinicians need access to a tool that can easily and consistently be used to find answers to clinical questions. UpToDate is currently the only product available which fills this critical patient safety need.

This service is available only from UpToDate, Inc. for licensed software and service/maintenance for their licensed software. UpToDate, Inc. has proprietary rights to the licensed software. The software is only available via open market.

**5. Description of Efforts Made to Ensure that Offers are Solicited from As Many Potential Sources as Deemed Practicable IAW FAR 13.104:**

This acquisition would normally be open-market and be open to bidding by any and all eligible vendors. However, the vendor has exclusive licensing agreements for this software. There is only one vendor that can fulfill the Government requirement for UpToDate software license for VISN 20 medical centers.

**6. Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Reasonable – IAW FAR 13.106-3:**

Pricing determined to be fair and reasonable by comparing to the independent government estimate, the price received for FY 11, 25% discount from vendor on listed price, and comparing price to similar item on GSA schedule. I conducted a search on GSA and found a similar item from a different company, The CBORD Group, and they charge \$10,619.05 per user for 1 year. The UpToDate software is based off patient admissions not users but if we were to purchase per user for each station covered under VISN 20 that plans to access UpToDate we would be looking at 32 stations to include all CBOC's and VAMC's in VISN 20. Therefore, the UpToDate is offered at a significant discount to that of a similar service on GSA. Therefore, I determine this pricing is fair and reasonable.

**7. Description of the Market Research Conducted and the Results, or Statement of Reasons Market Research was not Conducted (FAR 10):**

- UpToDate website has licensing agreement posted for use of their software.
- Procurement List Ability One was checked via key word, "Medical Software" with no results.
- UNICOR was checked via the same key word with no results.
- NAC was checked via key word "UpToDate" with no results.
- GSA was checked, unfortunately the software being requested is not on contract. Similar product is on GSA, however, pricing we are receiving compared to similar product is at a reduced price.
- Vendor confirmed the requested software is not on FSS contract.
- Software has licensing agreements and suggested vendor is the only one authorized to sell user names and authorizations to use the web based software for this purchase request.
- UpToDate, Inc. (DUNS# 824945448) is a large business under NAICS code 511210.

**8. Any Other Facts Supporting the Restriction of Competition:**

The manufacturer is the only licensed seller of the requested software and maintenance.

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

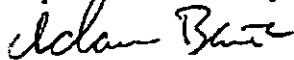
None

**10. Statement of 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:**

Competing this procurement and potentially using another vendor would not benefit the administrative effort by the Government due to this service being provided by the manufacturer and distributor of the software in question. Based on this situation and previous procurements, it is my decision it would be in the best interest of the Government to procure this service from UpToDate, Inc, 95 Sawyer Road, Waltham, MA 02453

**11. Requirements Certification - IAW FAR 6.303-2(c):**

I certify that the requirement outlined in this justification is a bonafide 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.



Name: Adam Bluth  
Position: Health Systems Specialist

8-16-2012

Date

**12. Approvals IAW VHA SOP 3.22.11:**

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



Name:  
Contracting Officer  
VISN 20 Specialized Team

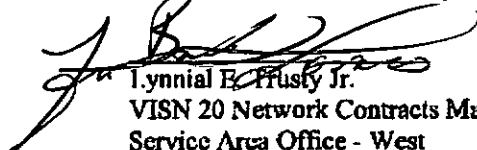
8/23/12  
Date

- b. **Quality Assurance Manager:** I have reviewed the foregoing justification and find it to be complete and accurate to the best of my knowledge and belief and recommend approval for other than full and open competition.

  
Dennis Riches  
VISN 20 Contracts QA Manager  
VISN 20 Acquisition Division

Date

- c. **Acquisition Manager's 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 recommend approval for other than full and open competition.

  
Lynnial R. Flusty Jr.  
VISN 20 Network Contracts Manager  
Service Area Office - West

8/24/2012  
Date